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Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FRESENIUS MEDICAL CARE HOLDINGS,
INC., a New York corporation; and FRESENIUS
USA, INC., a Massachusetts corporation.

Case No. C 03-01431 SBA (EDL)

**DECLARATION OF THOMAS S.
MCCLENAHAN IN SUPPORT OF
FRESENIUS' OPPOSITION TO BAXTER
DEFENDANTS' MOTION TO BAR
FRESENIUS' PROFFERED DAMAGES
EXPERT PROFESSOR RUBINFELD**

Plaintiffs and Counterdefendants,

V.

BAXTER INTERNATIONAL, INC., a Delaware corporation; and BAXTER HEALTHCARE CORPORATION, a Delaware corporation.

Defendants and Counterclaimants.

1 I, Thomas S. McClenahan, hereby state and declare as follows:

2 1. I am an attorney in the law firm of Fish & Richardson P.C., P.A., counsel of record
3 for Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc. (collectively, "Fresenius") in
4 the above entitled action.

5 2. I make this declaration in support of Fresenius' Opposition to Baxter's Motion to
6 Bar Fresenius' Proffered Damages Expert Professor Rubinfeld.

7 3. Attached to this declaration as **Exhibit A** is a true and correct copy of a December
8 1, 1998 letter to William Grieco from James Geringer.

9 4. Attached to this declaration as **Exhibit B** is a true and correct copy of *Calculating*
10 *Intellectual Property Damages* (AICPA 2006).

11 5. Attached to this declaration as **Exhibit C** is a true and correct copy of Patent
12 Damages and Practice § 3:7, Reasonable Royalty Damages.

13
14 I declare under penalty of perjury that the foregoing is true and correct.

15
16 Dated: March 21, 2006

17 s/ Thomas S. McClenahan
18 Thomas S. McClenahan

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